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Dated: May 5, 2010

Electronic Signature for A. Jacqueline Wizeman: /A. Jacqueline Wizeman/

Docket No.: 118019-00301  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Alexander M. Korsunsky

Application No.: 10/502,432

Confirmation No.: 8126

Filed: July 25, 2005

Art Unit: 2882

For: X-RAY DIFFRACTION METHOD

Examiner: Anastasia Midkiff

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**STATEMENT UNDER 37 C.F.R. §1.705(b)(2)**

Dear Sirs:

1. This statement is respectfully submitted in support of the Request for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. §1.705(b) being filed herewith in connection with the above-referenced patent application. In view of the following, it is respectfully requested that Applicants be granted a Patent Term Adjustment of 918 days.
2. Pursuant to 37 C.F.R. §1.705(b)(2)(i), Applicants respectfully submit that the correct period of Patent Term Adjustment is 918 days. Applicants are entitled to an adjustment of 322 days due to Examination Delays (A-delays) pursuant to 37 C.F.R. §§1.702(a) and 1.703(a). Applicants are also entitled to an adjustment of 1122 days due to Three-Years Delays (B-delays) pursuant to 35 U.S.C. §154(b) and 37 C.F.R. §1.702(b), which requires issuance of a patent within three (3) years after the date on which the application was filed under 35 U.S.C. §111(a). Pursuant to 37 C.F.R. §1.704 (a) the Patent Term Adjustment should be reduced by ~~504~~ days due to Applicants' delays. The Patent Term Adjustment should further be reduced by 22 days of

overlap between A-delays and B-delays pursuant to 37 C.F.R. § 1.703(f). Accordingly, Applicants are entitled to a Patent Term Adjustment that is equivalent to the total of the sum of 322 days of A-delays and 1122 days of B-delays minus the sum of 504 days of Applicant delays and 22 days of overlap. Accordingly, the correct Patent Term Adjustment is 918 days.

3. The relevant dates pursuant to 37 C.F.R. § 1.705(b)(2)(iii) and the adjustment that the patent will be entitled to pursuant to 37 C.F.R. § 1.703(f) are set forth as follows:

**A-Delays: USPTO Examination Delays Pursuant to 37 C.F.R. § 1.702(a) and § 1.703(a)**

Applicants do not dispute the U.S. Patent and Trademark Office (USPTO) A-delays calculated under 37 C.F.R. § 1.703(a). Applicants note that the Notice of Allowance allotted 322 days of USPTO A-delays.

**B-Delays: USPTO Three-Years Delay Pursuant to 37 C.F.R. § 1.702(b) and § 1.703(b)**

In the instant case, the Patent Term Adjustment listed in the Notice of Allowance mailed by the USPTO on February 5, 2010 is 322 days, corresponding only to the A-delays while excluding all B-delays. However, Applicants respectfully note that the filing date of this application was July 22, 2004. The three-year period, for purposes of calculating B-delays, ended on July 22, 2007. Accordingly, pursuant to 37 C.F.R. § 1.703(b), Applicants are entitled to a Patent Term Adjustment that is equivalent to the sum of the number of days in the period beginning on July 23, 2007 and ending on the date that the patent issues (anticipated to be August 17, 2010 by the Notice of Allowance). The sum of the period beginning on July 22, 2007 and ending on August 17, 2010 is 1122 days.

**Overlapping Periods of USPTO A-Delays and B-Delays Pursuant to 37 C.F.R. § 1.703(f)**

As set forth in 37 C.F.R. §1.703(f), the period of adjustment based on the grounds set forth in 37 C.F.R. §1.702 is the sum of all periods of Examination Day and the maximum period of Three Years Delay, to the extent these periods of delay are not overlapping. In the instant case, the B-delays began on July 22, 2007 and the USPTO A-delays included a period between July 22, 2007 and July 24, 2007 as well as a period between April 17, 2009 and May 7, 2009. Accordingly, there were 22 days of overlap between A-delays and B-delays.

**Applicants' Delays Pursuant to 37 C.F.R. § 1.704(a)**

Applicants respectfully dispute the USPTO's calculation of the Applicants' delays under 37 C.F.R. § 1.704(a). Applicants note that the Notice of Allowance states that Applicants have not accrued Applicant delays. However, Applicants respectfully note that an Office Action was mailed on July 24, 2007, subsequent to which the application was unintentionally abandoned on January 25, 2008. A Notice of Abandonment was sent from the Office on February 25, 2008, and a Petition to Revive and Response to the outstanding Office Action were filed on December 17, 2008. The Petition to Revive was granted by the Office on March 11, 2009.

According to 37 C.F.R. § 1.704(b), any period of adjustment will be reduced by a period of time taken to reply to an Office Action in excess of three months. Accordingly, it is the Applicants' understanding that the period of time from October 25, 2007 to December 17, 2008 constitutes Applicant Delay. Moreover, according to 37 C.F.R. § 1.704(c)(3)(i), any period of adjustment will be reduced by a period of time beginning on the date of abandonment and ending on the date of mailing of the decision reviving the application. Accordingly, it is the Applicants' understanding that the period of time from January 25, 2008 to March 11, 2009 constitutes Applicant Delay. Finally, according to 37 C.F.R. § 1.704(c)(4), any period of adjustment will be reduced by a period of time beginning on the day after the date two months from the mailing date of a Notice of Abandonment and ending on the date a petition to revive the application was filed. Accordingly, it is the Applicants' understanding that the period of time from April 26, 2008 to March 11, 2009 constitutes Applicant Delay.

In sum, and accounting for all of the overlap, it is Applicants understanding that the period of time from October 25, 2007 to March 11, 2009, or 504 days, constitutes Applicant Delay.

4. In accordance with 37 C.F.R. § 1.705(b)(2)(iii), Applicants submit that the above-referenced application is not subject to a terminal disclaimer.
5. In view of 37 C.F.R. § 1.705(b)(2)(iv)(A), Applicants submit that they are unaware of any circumstances during the prosecution of the application, beyond the 504 days enumerated above, that would constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. § 1.704.

6. In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that the issued patent reflect a Patent Term Adjustment of 918 days.

7. In accordance with 37 C.F.R. §1.705(b)(2)(i), Applicants submit herewith the fee set forth in 37 C.F.R. 1.18(e). It is Applicants' understanding that this \$200.00 fee is required for this Request for Reconsideration of the Patent Term Adjustment. However, should any additional fees be necessary, the Director is hereby authorized to charge any deficiency to our Deposit Account No. 50-4876, under Order No. 118019-00301.

Dated: May 5, 2010

Respectfully submitted,

By /A. Jacqueline Wizeman/  
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